AMENDED APPENDIX CC

Refunds Pre-Harper	Refunds or Settlement Negotiations Post-Harper		No Refunds No Settlement
Arizona	Alabama	Montana	North Carolina
Michigan[1]	Arkansas	New Mexico	
Missouri	Colorado	New York[5]	
	Georgia[2]	Oklahoma	
	Iowa	Oregon	
	Kansas	South Carolina[6]	
	Kentucky[3]	Utah	
	Louisiana	Virginia[6]	
	Minnesota[4]	West Virginia	
	Mississippi	Wisconsin[5]	

1 Although the state paid refunds to Davis after the Supreme Court ruling, the state continued to litigate retroactive relief in *Fonger*. State later paid refunds in light of *Harper* to those who timely complied with the refund statute.

2 Georgia is struggling toward settlement.

3 Kentucky has conceded that retirees were entitled to refunds. State is currently litigating procedural (two year vs. four year statute of limitations), rather than constitutional, questions.

4 Minnesota is not a federal retiree case, but one remanded "in light of Harper."

5 Wisconsin and New York have made settlement offers. Certain areas of the settlements have not been approved and are currently being debated.

6 Virginia and South Carolina recently approved settlements through the state legislature and Governors' offices.

APPENDIX HH

Relevant North Carolina General Statutes and Session Laws

§ 127A-40. Pensions for the members of the North Carolina national guard.

(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of fifty dollars ($50.00) per month for 20 years' creditable military service with an additional five dollars ($5.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed one hundred dollars ($100.00) per month. The requirements for such pension are that each member shall:

(1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.

(2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.

(3) Have received an honorable discharge from the North Carolina national guard.

(b) Payment to a retired member of the North Carolina national guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of

the regular components of the armed forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Benefits paid under the provisions of this section shall be exempt from the North Carolina income tax.

(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years or creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to and transferred from the Department of Crime Control and Public Safety. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities.

(g) The provisions of this section shall apply to any member or former member of the North Carolina national guard

who is qualified for the above retirements with eligibility of such person commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision. (1973, c. 625, s.1; 1241, ss. 1-3; 1975, c.604, s.2; 1977, c.70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251.)

§ 127A-42. Distinguished Service Medal by Governor of North Carolina.

There is hereby created the North Carolina Distinguished Service Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor. Upon the recommendation of the Secretary of Crime Control and Public Safety and a board consisting of the Adjutant General and all other general officers and officers assigned to authorized general-officer-grade vacancies, North Carolina national guard, the governor is authorized to present such medal to any member or former member of the armed forces discharged under honorable conditions, who has distinguished himself by exceptionally meritorious conduct in the performance of outstanding service to the North Carolina national guard. The Governor, on his own authority, may award such medal to the Secretary of Crime Control and Public Safety, the Adjutant General, or any other active or inactive general officer of the armed forces, who has distinguished himself by especially meritorious conduct in the performance of his duties. (1955, c.

255, s. 2; 1963, c. 1016, s. 2; 1973, c. 1124; 1975, c. 604, s. 2; 1977, c. 230, s. 1)

§ 127A-43. North Carolina National Guard Meritorious Service Medal.

There is hereby created the North Carolina National Guard Meritorious Service Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be work in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Governor or his designated representative is authorized to award this medal upon the recommendation of the Secretary of Crime Control and Public Safety in consultation with the Adjutant General and a board of officers appointed by the Adjutant General. Any member or former member of the armed forces discharged under honorable conditions, who has distinguished himself by heroism, meritorious achievement, or meritorious service to the North Carolina national guard, is eligible for this award. The Governor, on his own authority, may award such medal to the Secretary of Crime Control and Public Safety, the Adjutant General or any other active or inactive general officer of the armed forces who has distinguished himself by heroism, meritorious achievement, or meritorious service to the North Carolina national guard. The required heroism, achievement, or service, while of a lesser degree than that required for awarding of the North Carolina Distinguished Service Medal, must nevertheless be accomplished with distinction. (1973, c. 966, s. 1; 1975, c. 604, s. 2; 1977, c. 230, s. 2)

§ 127A-44. North Carolina National Guard Commendation Medal.

There is hereby created the North Carolina National Guard Commendation Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The

Adjutant General of North Carolina or his designated representative, who shall not be below the grade of general officer, is authorized to award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina national guard, is eligible for this award. (1975, c. 604, s. 2; 1977, c. 230, s. 3)

§ 127A-105. Rations and pay on State service.

The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof, provided that no officer or enlisted personnel shall receive less than 12 times the minimum hourly wage per day as provided for in G.S. 95-87. (1813, c. 850, s. 5, P.R.; R.C., c. 70, s. 84; Code, s. 3248; Rev., s. 4856; 1907, c. 316; 1917, c. 200, s. 50; C.S., s. 6864; 1935, c. 452; 1959, c. 218, s. 17; 1975, c. 604, s. 2)

§ 127A-106. Paid by the State.

When the militia or any portion thereof shall be ordered by the Governor into State service, the pay, subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor and warrant of the auditor. (1917, c. 200, s. 52; C.S., s. 6866; 1975, c. 604, s. 2)

§ 127A-107. Rate of pay for other service.

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted member shall be paid out of the appropriations made to the Department of

Crime Control and Public Safety. Such officers and enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the regular service, provided that no such offer or enlisted member shall receive less than 12 times the minimum hourly wage per day as provided for in G.S. 95-87. Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s.51; C.S., s. 6865; 1935, c. 451; 1949, c. 1130, s. 4; 1959, c. 218, s. 18; 1963, c. 1019, s. 1; 1969, c. 986; 1971, c. 204; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2.)

§ 127A-108. Pay and care of soldiers, airmen and sailors disabled in service.

A member of the national guard, the State defense militia, or the naval militia who without fault or negligence on his part is disabled through illness, injury, or disease contracted or incurred while on duty or by reason of duty in the service of the State or while reasonably proceeding to or returning from such duty shall receive the actual necessary expenses for care and medicine and medical attention at the expense of the State and if such shall temporarily incapacitate him from pursing his usual business or occupation he shall receive during such incapacity the pay and allowances are as provided for the same grad and rating in like circumstances in the active armed forces of the United States. If such member is permanently disabled, he shall receive the pensions and rewards that persons under similar circumstances in the military service of the United States receive from the United States. In case any such member shall dies as a result of such injury, illness or disease within one year after it has been incurred

or contracted, the surviving spouse, minor children, or dependent parents of the member shall receive such pension and rewards as persons under similar circumstances received from the United States.

The cost incurred by reason of this section shall be paid out of the Contingency and Emergency Fund, or such other fund as may be designated by law.

The Adjutant General, with the approval of the Governor, shall make and publish such regulations pursuant to this section as may be necessary for its implementation. Before the name of any person is placed on the disability or pension rolls of the State under this section, proof shall be made in accordance with such regulations that the applicant is entitled to such care, pension, or reward.

Nothing herein shall in any way limit or condition any other payment to such member as by law may be allowed: Provided, however, any payments made under the provisions of Chapter 97 of the General Statutes or under federal statutes as now or hereafter amended shall be deducted from the payments made under this section. (1917, c. 200, s. 54; C.S., s. 6868; 1959, c. 218, s. 19; c. 763; 1965, c. 1058; 1975, c. 604, s. 2.)

§ 127A-109. Pay of general and field officers.

General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank. (1917, c. 200, s. 53; C.S., s. 6867; 1975, c. 604, s. 2.)

§ 127A-192. Definitions.

(a) "Business and Trade School". - Any school within the State of North Carolina which is licensed by the State Board of

Education and listed by that Board as an approved private business school or an approved private trade school.

(b) "Private Educational Institutions". - Any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within and licensed by the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of this Article.

(c) "Secretary". - The Secretary of Crime Control and Public Safety or his designee.

(d) "State Educational Institutions". - Any of the constituent institutions of the University of North Carolina, or any community college or technical institute operated under the provision of Chapter 115A or Article 3 of Chapter 116 of the General Statutes of North Carolina.

(e) "Academic Year". - Any period of 365 days beginning with the first day of enrollment for a course of instruction. (1975, c. 917, s. 4; 1977, c. 70, s. 2; c. 228, s. 1.)

§ 127A-193. Benefit.

The benefit provided under this Article shall consist of a monetary educational assistance grant not to exceed five hundred dollars ($500.00) per academic year to qualifying members of the North Carolina national guard. Benefits shall be payable for a period of one academic year at a time, renewable at the option of the Secretary for a maximum of two thousand dollars ($2,000). (1975, c. 917, s. 5; 1977, c. 228, s. 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 99, 100.)

§ 127A-194. Eligibility.

(a) Active members of the North Carolina national guard who are enrolled or who shall enroll in any business or trade school, private educational institution or State educational institution shall be eligible to apply for this tuition assistance benefit: Provided, that the applicant has a minimum obligation of two years remaining as a member of the national guard from the end of the academic period for which tuition assistance is provided or that the applicant commit himself or herself to extended membership for at least two additional years from the end of said academic period.

(b) This tuition assistance benefit shall be applicable to students in the following categories:

(1) Students seeking to achieve completion of their secondary school education at a community college or technical institute.

(2) Students seeking trade or vocational training or education.

(3) Students seeking to achieve a two-year associate degree.

(4) Students seeking to achieve a four-year baccalaureate degree.

(5) Students seeking to achieve a graduate degree. (1975, c. 917, s. 6; 1977, c. 288, ss. 3, 4.)

§ 105-134.6. Adjustments to taxable income.

(b) Deductions. - The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in gross income:

(4) Any amount not to exceed one thousand five hundred dollars ($1,500) received by the taxpayer during the taxable years as compensation for the performance of duties as a member of the North Carolina organized militia, the national guard as defined in G.S. 127A-3.

§ 105-151.20. Credit for tax paid on certain government retirement benefits.

A taxpayer who received government retirement benefits during the 1988 tax year may claim a credit against the tax imposed by this Division equal to the amount by which the tax under this Division paid by the taxpayer for the 1988 tax year would have been reduced if none of the taxpayer's government retirement benefits had been included in the taxpayer's taxable income. If a taxpayer received a refund of any tax paid under this Division on government retirement benefits for the 1988 tax year, the amount of the refund reduces the amount of the credit allowed under this section.

As used in this section, the term "government retirement benefits" means retirement benefits received from one or more state, local, or federal government retirement plans. As used in this section, the term "1988 tax year" means the taxpayer's taxable year beginning on a day in 1988.

The credit allowed under this section shall be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1990. The credit allowed under this section may not exceed the amount of the tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer. (1989 Reg. Sess., 1990), c. 984, s. 6; 1991, c. 45, s. 11).

§ 105-266.1. Refunds of overpayment of taxes.

(a) Any taxpayer may apply to the Secretary of Revenue for refund of tax or additional tax paid by him at any time within three years after the date set by the statute for the filing of the return or application for a license or within six months from the date of payment of such tax or additional tax, whichever is later. The Secretary shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts, and adjust the computation of tax accordingly. The Secretary shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due: except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Setoff Debt Collection Act.

(b) The rules of evidence do not apply in a hearing before the Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or additional tax assessed under this section.

(c) Within 90 days after notification of the Secretary's decision with respect to a demand for refund of any tax or additional tax under this section any taxpayer aggrieved thereby, in lieu of petitioning for administrative review by the Tax Review Board under G.S. 105-241.1, may bring a civil action against the Secretary of Revenue for recovery of the alleged overpayment in the Superior Court of Wake County, or in the superior court of the county in which the taxpayer resides, if the alleged overpayment exceeds two hundred dollars ($200.00), and if two hundred dollars ($200.00) or less, in any State court of competent jurisdiction in Wake County. If upon trial it shall be determined that there has been an overpayment of tax or additional tax, judgment shall be rendered thereof, with interest, and the same shall be refunded by the State.

(d) Either party may appeal to the appellate division from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that the Secretary, if he should appeal, shall not be required to give any undertaking or make any deposit to secure the cost of such appeal.

(e) Nothing in this section shall be construed to conflict with or supersede the provisions of G.S. 105-241.2, and, with respect to tax paid to the Secretary of Revenue, the rights granted by this section are in addition to the rights provided by G.S. 105-267. (1957, c. 1340, s. 10; 1969, c. 44, s. 66; c. 1132, s. 2; 1973, c. 476, s. 193; 1979, c. 801, s. 91; 1981 (Reg. Sess., 1982), c. 1211, s. 2; 1987, c. 827, s. 22.)

§ 105-267. Taxes to be paid; suits for recovery of taxes.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and such payment shall be without prejudice to any defense of rights he may have in the premises. At any time within 30 days after payment, the taxpayer may demand a refund of the tax paid in writing from the Secretary of Revenue and if the same shall not be refunded within 90 days thereafter, may sue the Secretary of Revenue in the courts of the State for the amount so demanded. Such suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it shall be determined that such a tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of taxes for which judgment shall be rendered in such action shall be refunded by the State; provided, nothing in this section shall be construed to conflict with or supersede the

provisions of G.S. 105-241.2. (1939, c. 158, s. 936; 1955, c. 1350, s. 15; 1957, c. 1340, s. 10; 1977, c. 946, s. 1.)

1957 Session Laws Chapter 1340

Subsection (h1). Paragraph numbered (1) of Section 105.241.3 of the General Statutes is hereby amended by deleting from the second line of the paragraph the words "without prior payment of the tax" and by inserting in lieu thereof the following:

""upon payment of the tax, penalties and interest asserted to be due or upon filing with the Commissioner a bond in such form as the Commissioner may prescribe in the amount of said taxes, penalties and interest conditioned on payment of any liability found to be due on an appeal"."

Subsection (i). G.S. 105-241.4 is hereby amended by deleting from the caption thereof the words "under protest" and by deleting from the first paragraph thereof the words "under protest" wherever they appear after the words "may pay the tax."

Subsection (j). Subsection 3 of G.S. 105-242 is hereby amended by deleting the words "subsection (3)" in line one of the second paragraph thereof and by inserting in lieu thereof the words "subsection (5)."

Subsection (k). Article 9 of Chapter 105 of the General Statutes is hereby amended by inserting a new Section therein immediately following G.S. 105-266, to be designated as G.S. 105.266.1, and to read as follows:

"G.S. 105.266.1. Refunds of overpayment of taxes.
1. Any taxpayer may apply to the Commissioner of Revenue for refund of tax or additional tax paid by him at any time within three years after the date set by the statute for the filing of the return or application for a license or within six months from the date of payment of such tax or additional tax, whichever is later. The Commissioner shall grant a hearing thereon, and if upon such

hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts, and adjust the computation of tax accordingly. The Commissioner shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid in excess of the tax fund by him to be due.

"2. The provisions of G.S. 105.241.1, G.S. 105-241.2, G.S. 105-241.3 and G.S. 105-241.4 with respect to review and appeal shall apply to the tax for which refund is demanded under this Section.

"3. Within ninety days after notification of the Commissioner's decision with respect to a demand for refund of any tax or additional tax under this Section any taxpayer aggrieved thereby, in lieu of petitioning for administrative review by the Tax Review Board under G.S. 105-241.1, may bring a civil action against the Commissioner of Revenue for recovery of the alleged overpayment in the Superior Court of Wake County, or in the Superior Court of the county in which the taxpayer resides, if the alleged overpayment exceeds $200.00, and if $200.00 or less, in any State court of competent jurisdiction in Wake County. If upon trial it shall be determined that there has been any overpayment of tax or additional tax, judgment shall be rendered therefor, with interest, and the same shall be refunded by the State.

"4. Either party may appeal to the Supreme Court from the judgment of the Superior Court under the rules and regulations prescribed by law for appeals, except that the Commissioner, if he should appeal, shall not be required to give any undertaking or make any deposit to secure the cost of such appeal.

"5. Nothing in this Section shall be construed to conflict with or supersede the provisions of G.S. 105-241.2, and, with respect to tax paid to the Commissioner of Revenue, the rights granted by this Section are in addition to the rights provided by G.S. 105-267."

Subsection 1. G.S. 105-267 is hereby amended by deleting the second and third sentences thereof and by inserting in lieu of the deleted portion the following:

"Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and such payment shall be without prejudice to any defense of rights he may have in the premises. At any time within thirty days after payment, the taxpayer may demand a refund of the tax paid in writing from the Commissioner of Revenue of the State, if a State tax, or if a county, city or town tax, from the treasurer thereof for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue the Commissioner of Revenue or the county, city or town, as the case may be, in the courts of the State for the amount so demanded."

Dated: February 6, 1957.

CHAPTER 1002
SENATE BILL 1084

AN ACT TO CONFORM THE LAWS OF NORTH CAROLINA TO THE REQUIREMENTS OF CERTAIN FEDERAL LAWS AND CONSTITUTIONAL PRINCIPLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-115 is repealed.

Sec. 2. G.S. 105-134.6(b)(4) is repealed.

Sec. 3. This act is effective for taxable years beginning on or after January 1, 1990.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

/s/James C. Gardner
James C. Gardner
President of the Senate

/s/J.L. Mavretic
J. L. Mavretic
Speaker of the House of Representatives